(1975) 04 CAL CK 0012

Calcutta High Court

Case No: F.A. 391 of 1960 and 13 of 1966

Ramendra Nath Nandi and Others In F.A. 391 Sushil Chandra Sur and Others In F.A. No. 13		APPELLANT
	Vs	
State of West Bengal and Others In Both		RESPONDENT

Date of Decision: April 29, 1975

Acts Referred:

- Constitution of India, 1950 - Article 13(3), 14, 31(2), 31A, 31B
- Land Acquisition Act, 1894 - Section 11, 23, 23(2), 4(1), 8

Citation: 79 CWN 593

Hon'ble Judges: N.C. Mukherji, J; M.M. Dutt, J

Bench: Division Bench

Advocate: S.C. Mitter and Syama prasanna Roy Choudhury In F.A. No. 391 of 1960, Bhabani Prasun Chatterjee and Satindra Mohan Mukherjee In F.A. No. 13 of 1966, for the Appellant;P.K. Sen Gupta and Nani Gopal Das In FA. No. 391 of 1960, P.K. Sen Gupta, Bhabanath Dutta, Prafulla Kr. Chatterjee and Tapan Kr. Sen Gupta In F.A. No. 13 of 1966, for the Respondent

Final Decision: Allowed

Judgement

M.M. Dutt, J.

In these two appeals, which arise out of proceedings for compensation of land acquired under the West Bengal Land Development and Planning Act, 1948 (hereinafter referred to as the Act), the principal question relates to the constitutional validity of the second paragraph of clause (b) of the proviso to section 8(1), as amended by the West Bengal Land Development and Planning (Amendment) Act, 1955 (hereinafter referred to as the Amending Act). Clause (b) of the proviso to section 8 of the Act as it stood before the amendment is as follows :

Provided that in determining the amount of compensation to be awarded for land acquired in pursuance of this Act the market value referred to in clause first of sub-section (1) of section 23 of the said Act shall be deemed to be the market value of the land on the date of publication of the notification under sub-section (1) of section 4 for the notified area in v/hich the land is included subject to the following condition, that is to say, -

if such market value exceeds by any amount the market value of the land on the 31st day of December, 1946, on the assumption that the land had been at that date in the state in which it in fact was on the date of publication of the said notification, the amount of such excess shall not be taken into consideration.

2. On April 8, 1955, the Governor of West Bengal promulgated the West Bengal Land Development and Planning (Amendment) Ordinance, 1955 (West Bengal Ordinance No. IV of 1955). Section 2 of the Ordinance provided as follows :

Notwithstandjing anything contained in the West Bengal Land Development and Planning Act, 1948, the condition mentioned at the end of clause (b) of the proviso to section 8 thereof shall not apply, and shall be deemed never to have applied, in relation to land which is, or has been acquired in pursuance of the said Act for any public purpose other than the purposes specified in sub-clause (i) of clause (d) of Section 2 thereof.

3. On September 21, 1955, the Amending Act was passed inter alia enacting Section 2 of the Ordinance. Section 8 was renumbered as sub-section (1) and the Second paragraph of clause (b) of the proviso was amended by the Amending Act as follows:

if such market value in relation to land acquired for the public purpose specified in sub-clause (i) of clause (d) of section 2 exceeds by any amount the market value of the land on the 31st day of December, 1946, on the assumption that the land had been at that date in the state in which it in fact was on the date of publication of the said notification, the amount of such excess shall not be taken into consideration.

Section 2 (d) is as follows :

(d) "public purpose" includes--

(i) the settlement of immigrants who have migrated into the State of West Bengal on account of circumstances beyond their control,

(ii) the establishment of towns, model villages and agricultural colonies,

(iii) the creation of better living conditions in urban and rural areas, and

(IV) the improvement and development of agriculture, forestry, fisheries and industries;

but does not include a purpose of the Union.

4. Under the first paragraph of clause (b) the market value of the acquired land on the date of publication of the notification u/s 4(1) shall be the market value for the purpose of clause first of sub-section (1) of section 23 of the Land Acquisition Act, subject to the condition as contained in the Second paragraph, that if the land is acquired for a public purpose specified in section 2 (d) (i), that is, for the settlement of immigrants the compensation shall not exceed the market value of the land on December 31, 1946.

5. In F.A. No. 13 of 1966 the notification u/s 4(1) was published on December 8, 1955 and in F.A. No. 391 of 1966 it was published on April 3, 1950. In both these cases, lands were acquired for settlement of immigrants and compensation has been awarded on the basis of the market value of the lands as on December 31. 1946. It is contended on behalf of the appellants who were the referring claimants, that the second paragraph of clause (b) of the proviso to section 8(1) as amended, is violative of the equality clause of the Constitution and, as such, ultra vires and void. It has been claimed by them that they are entitled to the market value of the acquired lands on the date off the respective notifications u/s 4(1), as compensation.

6. The Act was included in the Ninth Schedule of the Constitution on April 27, 1955. Before the Act was included in the Ninth Schedule, the Second paragraph of clause (b) of the proviso was amended by the West Bengal Ordinance 4 of 1955. The Amending Act was passed on September 21, 1955, that is, after the Act was included in the Ninth Schedule substantially enacting the provision of the Ordinance. The question is whether the Second paragraph of clause (b) having been amended after the inclusion of the Act in the Ninth Schedule, the amended provision will get any protection of Article 31B of the Constitution. In Sajjan Singh Vs. State of Rajasthan, , it has been held by the Supreme Court that if a legislature amends any of the provisions contained in any of the Acts included in the Ninth Schedule, the amended provision would net receive the protection of Article 31B and its validity may be examined on merits. In a later decision of the Supreme Court in Ramanlal Gulabchand Shah Vs. The State of Gujarat and Others, , the constitutional validity of the amendment of section 65 of the Bombay Tenancy and Agricultural Lands Act, 1948 made after the inclusion of the said Act in the Ninth Schedule came up for consideration. It has been observed by the Supreme Court that if that amendment is accepted as unassailable it will have the indirect effect of amending the original Schedule Nine by including something in it which was not there before and that this is undoubtedly beyond the competence of any State legislature. It is, therefore, settled law that the constitutional validity of an amendment made to a statute after it is included in the Ninth Schedule may ge challenged and Article 31B will not give any protection to such an amendment.

7. If clause (b) had been amended for the first time by the Amending Act, it could be said at once that the amended provision would not get the protection of Article 31B, - for the amendment was made after the Act was included in the Ninth Schedule.

The Amending Act was, however, preceded by an Ordinance which, before the Act was included in the Ninth Schedule, amended the second paragraph of clause (b) with retrospective effect. On the basis of the decision in Ramanlal''s case referred to above, it is argued that the amendment of the second paragraph of clause (b) of the proviso to section 8(1) by the Amending Act not having carried the Act into a new field it will get the protection of Article 31B. The amendment that was made by the Ordnance and the amendment that was made by the Amending Act are subs-stantially the same. After the amendment of the second paragraph of clause (b) by the Amending Act, the Act was not carried into a new field. But the question is whether the amendment which was made by the Ordinance was protected by Article 31B after the inclusion of the Act in the Ninth Schedule. By the- Constitution (Fourth Amendment) Act, 1955, the Act was included as item No. 20 in the Ninth Schedule as follows :--*

20. The West Bengal Land Development and Planning Act, 1948 (West Bengal Act XXI of 1948). as amended by the West Bengal Act XXIX of 1951.

8. Mr. Chatterjee, learned Advocate appearing on behalf of the appellants submits that in including the Act in the Ninth Schedule, Parliament intended to give protection to the provisions of the Act as amended by the West Be Act XXIX of 1951 and- that it was ''not the intention of Parliament to extend the protection to the amendment made by the Ordinance. Had it been the intention of Parliament to give protection to the amendment made by the Ordinance, in that case, the Act would not have been included in the Ninth Schedule as amended only by the West Bengal Act XXIX of 1951. He submits that the express mention of the West Bengal Act XXIX of 1951 and non-mention of the Ordinance clearly indicates that it was not the intention of Parliament to give any protection to the Ordinance. Next, it is contended by him that the Ordinance was only a temporary provision which could be withdrawn by the Governor at any time and it died a natural death after the Amending Act was passed by the Legislature. It is submitted that the Legislature might not have amended the second paragraph of clause (b) in the same manner as was done by the Ordinance. Further, it is submitted that Article 31B does not apply to temporary provisions, far less to the provisions of an Ordinance which is transitory in nature.

9. On the other hand, it is contended by Mr. P. K. Sen Gupta, learned Advocate appearing on behalf of the of the State of West Bengal that the second paragraph of section 8(1) (b) having been amended by the Ordinance before the Act was included in the Ninth Schedule and that the provisions the Ordinance having been re-enacted by the Amending Act, the amendment will get the protection of Article 31B. He submits that non-mention of the Ordinance in item No. 20 of the Ninth Schedule is irrelevant and does not deprive the amendment made by the Ordinance and re-enacted by the Amending Act of the benefit of the said protection. It is said that the West Bengal Act XXIX of 1951 has been mentioned in item No. 20 by way of

abundant caution and such mentioning does not exclude the amendment of the second paragraph of clause (b) by the Amending Act from the benefit of the protection under Article 31B. He submits that Article 31B applies both to permanent and temporary statutes including an Ordinance which has the force of law under Article 13(3) of the Constitution.

10. The West Bengal Act XXIX of 1951 by which the Act was amended has been mentioned in item No. 20 of the Ninth Schedule, but the Ordinance has not been mentioned. In our view, there is much substance in the contention of Mr. Chatterjee that by mentioning the West Bengal Act XXIX of 1951, Parliament intended to give protection to the Act as amended by Act XXIX of 1951. If Parliament had intended to protect the amendment made by the Ordinance, in that case, the Ordinance would have been mentioned. Mr. Sen Gupta has placed reliance on a decision of the Supreme Court in State of Maharashtra etc. Vs. Madhavrao Damodar Patilchand and Others etc., . In that case, it was argued before the Supreme Court that the Act 13 of 1962 which amended the Maharashtra State Agricultural Lands (Ceiling on Holdings) Act, 1961 would not get protection of Article 3IB inasmuch as the said Amending Act 13 of 1962 was not mentioned in the Ninth Schedule along with the principal Act. In repelling the said contention it has been held by the Supreme Court that although some Amending Acts are mentioned in the Ninth Schedule apart from the principal Acts, there are many other Acts which had been amended before they were inserted in the Ninth Schedule and that it can be hardly imagined that Parliament intended only to protect the Act as originally passed and not the amendments made up to the date of their incorporation into the Ninth Schedule. After referring to item No. 20 and some other items of the list, it has been observed that the reason for the express insertion of certain Amending Acts is that some States, out of abundant caution, recommended that their Amending Acts be specifically inserted in the Ninth Schedule. In our view, the observation made by the Supreme Court in Madhavrao''s case does not lend support to the contention of Mr. Sen Gupta; on the contrary it supports the contention of Mr. Chatterjee. It follows from the said observation that the State of West Bengal in its eagerness to protect the amendments made by the Act XXIX of 1951 recommended for its insertion in the Ninth Schedule along with the Act by way of abundant caution. It may, therefore, be reasonably inferred that the State of West Bengal had no intention to protect the amendment made by the Ordinance. In our opinion, there is a good deal of difference between insertion in the Ninth Schedule of an Amending Act along with the principal Act and insertion of the principal Act only without any Amending Act. In the first case, the principal Act as amended by the Amending Act which is inserted is protected, and any other Amending Act not so inserted is by necessary implication excluded from such protection. In the latter case, all amendments made to the principal Act up to the date of its inclusion in the Ninth Schedule are protected. By expressly including the Act XXIX of 1951 in the Ninth Schedule, neither the State nor Parliament intended to protect the amendment made by the Ordinance.

11. In considering the intention of Parliament, it is difficult to imagine that the State will recommend the prolection of a provision which is transitory in character and will cease to operate at the expiration of six weeks from the re-assembly of the Legislature or even earlier if a resolution disapproving it is passed by the Legislative Assembly or if withdrawn by the Governor. Article 31B provides as follows :

Without prejudice to the generality of the provisions contained in Article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become. void, on the ground that such Acts, Regulations or provisions is inconsistent with, or takes away or abridges any of the rights conferred by, any provision of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the. said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend continue in force.

Notwithstanding that a particular-Act or. regulation has been included in the. Ninth Schedule, the Legislature will have the power to repeal or amend it but subject to such power the Act or, regulation. shall continue in force. An amendment" of an Act made by an Ordinance cannot continue in force, for the Ordinance itself will cease to operate after a certain period or even earlier as stated above. It is, therefore, manifestly clear that Article 31B refers to.such Acts and Regulations which, subject to the power of a competent Legislature to repeal or amend may continue to remain operative and not to cease to operate on the expiry of a. certain period or on the happening of a contingency. The expression "shall continue in force" in Article 31B is significant. On a proper interpretation of Article 31B, we are of the view that there is great force in the contention of Mr. Chatterjee that only permanent statutes can be included in the Ninth Schedule so as to save them from any attack for the violation of the rights conferred by Part III of the Constitution. In these circumstances, we hold that the second paragraph of clause (b) of the proviso to Section 8 as amended by the Ordinance did not get any protection of Article 31B, and consequently, the amendment of that paragraph by the Amending Act having been made after the incorporation of the Act in the Ninth Schedule will not also get any protection.

12. Now the question is whether the second paragraph of clause (b) of the proviso to section 8(1) of the Act as amended is ultra vires Article 14 of the Constitution. Under that provision if the land is acquired for any public purpose other than for settlement of immigrants, the owner will get compensation on the basis of the market value of the acquired land on the date of the publication of the notification u/s 4(1). If, however, the acquisition is made for settlement of immigrants the compensation shall not exceed the market value of the land as on December 31, 1946. The impuglned provision seeks to make a discrimination between owners of land under like circumstances and situations. It is true that the legislature is competent to make a, reasonable classification but that classification must be based on an intelligible differentia and the differentia must have a rational relation to the

object sought to be achieved by the legislation concerned. It is only under the circumstances that a classification or discrimination made between two sets of persons similarly placed may be upheld as valid.

13. The object of the Act as stated in the preamble is to provide for the acquisition and development of land for public purposes. Some of the public purposes for which lands can be acquired have been enumerated in section 2(d) of the Act. One of the purposes is the settlement of immigrants who have migrated into the State of West Bengal on account of circumstances beyond their control. There can be no doubt that it is the duty of the State Government to provide accommodation to the immigrants who had to migrate into the State of West Bengal against their will under circumstances beyond their control. There is no dispute that the purpose is a public purpose and acquisition of lands for this purpose will get priority over other purposes mentioned in section 2(d). The unamended, section 8(b) provides for payment of compensation equal to the market value of the acquired land on December 31, 1946. This is surely not a just equivalent of the acquired land, and, consequently, it contravenes the fundamental rights guaranteed by the provisions of Part III of the Constitution. In The State of West Bengal Vs. Bela Banerjee and Others, , the Supreme Court struck down the said provision as ultra vires Article 31(2) of the Constitution. Thereafter, the Act was incorporated in the Ninth Schedule, as a result of which the unamended provision of clause (b) of the proviso to section 8 became immune from challenge as contravening the provisions relating to the fundamental rights of citizens as contained in Part III of the Constitution. It has been stated already, that as clause (b) has been amended after the incorporation of the Act in the Ninth Schedule, the amended provision does not get the protection of Article 31B.

14. There is no indication in the Act or in the Amending Act why such a discrimination has been, made with regard to the, payment of compensation. If a piece of land is acquired for settlement of immigrants and another piece of land is acquired for a public purpose other than for settlement of immigrants, the owner of the land which is acquired for settlement of immigrants will get compensation not exceeding the market value of the land as on December 31, 1946. But in the other case, the owner will get compensation equivalent to the market value of the land on the date of the publication of the notification u/s 4(1). The purpose for which a land is acquired has nothing to do with the amount of compensation that has to be paid by the State; the object of the Act as stated above, is simply to provide for the acquisition and development of land for public purposes. We fail to see what relation can a specific public purpose or the amount of compensation can have to the said object. The purpose for which a land is acquired is immaterial to the owner of the land. The owner is only interested in the payment of compensation. He is not interested in the purpose for which the land is acquired. If he finds that the land of another person has been acquired and that person gets a higher amount of compensation he will be entitled to make a reasonable grievance about the same. In

our opinion, it will be no answer that because the land has been acquired for settlement of immigrants the compensation must not exceed the market value of the land as on December 31, 1946. As has been stated already, we do not see any relation, far less any rational relation, between the classification made between owners of lands regarding payment of compensation and the object of the Act or the object sought to be achieved by such classification.

15. In P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, , the Supreme Court has struck down the Land Acquisition (Madras Amendment) Act, 1961 as violative of Articte 14 of the Constitution, for the said Amending Act provided for payment of a lesser value to the owner if the land was acquired for a housing scheme than he would get for the same land or a similar land if it was acquired for a public purpose like hospital, under the Land Acquisition Act, 1894. In the Deputy Commissioner and Collector, Kamrup and Others Vs. Durga Nath Sarma, , the validity of Assam Acquisition of Land for Flood Control and Prevention of Erosion Act 6 of 1955 was challenged as violative of Article 14 of the Constitution. The Assam Act provided for speedy acquisition of lands for the public purpose of carrying out works or other developr ment measures in connection with flood control or prevention of erosion on payment of compensation assessed on the basis of a multiple of the annual land revenue, that is, on payment of a nominol compensation. But a similar land could be acquired under the Land Acquisition Act on payment of adequate compensation. It was held by the Supreme Court that there was unjust discrimination between owners of land similarly situated by the mere accident of some land being required for purposes mentioned in the Assam Act and some land being required for other purposes. Accordingly, the Assam Act was held to contravene Article 14 of the Constitution and was declared void.

16. In Balammal and Others Vs. State of Madras and Others, , clause (6), subclause (2) of the schedule read with section 73 of the Madras City Improvement Trust Act which deprived the owners of the statutory right to solatium at the rate of 15 per cent on the market value of the land was held by the Supreme Court as invalid as it is violative of the equality clause of the Constitution. Further, it was held that it was a clear case of discrimination which infringed the Constitutional guarantee of equal protection of the law, and the provision which was more prejudicial to the owners of land compulsorily acquired must be deemed invalid. It was observed that the distinction was not supported by any rational classification having reasonable relation to the subject-matter of the special provision and was not founded on any intelligible differentia.

17. The question whether classification can be made on the basis of the public purpose for the purpose of compensation for which the land is acquired came up for consideration before the Supreme Court in a recent decision in Nagpur Improvement Trust v. Vithal Rao AIR 1973 S.C. 689. Sikri C.J. who delivered the judgment of the Court observed as follows :

Can classification be made on the basis of the public purpose for the purpose of compensation for which land is acquired ? In other words, can the legislature lay down different principles of compensation for lands acquired say for a hospital or a school or a Government building ? Can the legislature say that for a hospital land will be acquired at 50 per cent of the market value, for a school at 60 per cent of the value, and for a Government building at 70 per cent of the market value ? All three objects are public purposes and as far as the owner is concerned it does not matter to him whether it is one public purpose or the other. Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land ? In other words can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government ? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other. It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of the two Acts would enable the State to give one owner different treatment from, another equally situated the owner who is discriminated against can claim the protection of Art. 14.

18. The principles of law as laid down in Vithal Rao''s case apply with all force to the facts and circumstances of the instant cases. Here also the classification for the purpose of compensation of the acquired lands has been made on the basis of the public-purpose for which the lands have been acquired. The Second paragraph of the amended provision of clause (b) of the proviso to section 8(1) has sought to dsicriminate between owners similarly situated. The discrimination or classification is not based on any intelligible differentia having any rational relation to the object sought to be achieved. It may bethat the purpose for which the lands in the instant cases have been acquired, namely, for settlement of immigrants is a very laudable purpose, but it matters very little to the owneRs. We do not find any justification for the differential treatment sought to be made by the impugned provision of the second paragraph of clause (b).

19. Mr. Sen Gupta has placed strong reliance on Article 31(2) of the Constitution as amended, which provides that no property shall, be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation

provided by that law is not adequate. It is argued that section 8 (1) (b) including the second paragraph thereof, having specified the principle on which compensation is to be determined and the Act also having laid down the manner in which compensation is to be given, the adequacy of the compensation cannot be challenged in view of Article 31(2). This argument, in our opinion, is fallacious. There is a wide distinction between adequacy of compensation and discrimination; that may be made as to the quantum of compensation. The first paragraph of section 8(1) (b) provides for payment of compensation equal to the market value of the land on the date of the publication of the notification u/s 4(1), subject to the condition which is contained in the second paragraph, namely, that if the land is acquired for settlement of immigrants, such compensation shall not exceed the market value of the land as on December 31, 1946. Although a citizen is precluded from challenging the adequacy of compensation in view of Article 31(2) as amended, he can, in our view, surely complain about the discrimination which has been sought to be made between owners of land under like circumstances and conditions. If the legislature had provided for payment of the same amount of compensation or laid down the same principle for the determination of the amount of compensation in all cases of acquisition, whether for one public purpose or another, in that case, it might have been difficult to challenge the adequacy of compensation and there might not have been any scope for discrimination; but where, as in the instant cases, the quantum of compensation depends on the public purpose for which the land is acquired without any reasonable relation to the object sought to be achieved, the provision must be held to be in infringement of the equality clause of the Constitution and, as such, void.

20. Mr. Sen Gupta submits that in The State of West Bengal and Others Vs. Naba Kumar Seal, , the classification which has been sought to be made by the impugned provision of the Act has been upheld by the Supreme Court as based on a rational consideration, having due regard to the purpose and policy underlying the Act. In that case, the question was whether section 7 of the Act was ultra vires the provisions relating to the fundamental rights as contained in: Part III of the Constitution. In that connection, the Supreme Court has observed that there are two classes of cases into which land acquisition proceedings envisaged by the Act fall; that the two classes can be easily identified and the purpose of the classification is based on a rational consideration, having due regard to the purpose and policy underlying the Act, namely, to acquire land for the public purpose, inter alia, of resettling immigrants who had to leave their hearth and home on account of circumstances beyond their control; such cases of urgency, as come u/s 7, are clearly meant to serve the main purpose of the Act and that, therefore, no discrimination is made by section 7. Section 7 of the Act provides that in cases of urgency, if in respect of any notified area the State Government is satisfied that the preparation of a development scheme is likely to be delayed, the State Government may, at any time, make a declaration u/s 6, in respect of such notified area or any

part thereof though no development scheme has either been prepared or sanctioned u/s 5. This is a special provision in case of urgency. The observation of the Supreme Court in Naba Kumar, Seal''s case referred to above as to the rational classification which has been made by section 7 has no application to the consideration of the question of discrimination which has been made by the second paragraph of section 8(1) (b) as to the amount of compensation.

21. For the foregoing reasons, we are of the view that the second paragraph of clause (b) of the proviso to section 8(1) of the Act as amended, having made a differential treatment to the owners of land similarly situated without any rational relation to the object sought to be achieved, is ultra vires Article 14 of the Constitution and is void. The result, therefore, is that the appellants will be entitled to the payment of compensation on. the basis of the market value on the date of publication of the notification u/s 4(1), as laid down in the first paragraph of clause (b) of the proviso to section 8(1).

22. The next question which arises for consideration is whether the appellants are entitled to the statutory allowance of 15 per cent u/s 23(2) of the Land Acquisition Act. Subsection (2) of section 8 of the Act provides that when the amount of compensation has been determined under sub-section (1), the Collector shall make an award in accordance with the principles set out in section 11 of the said Act, but no amount referred to in subj-section (2) of section 23 of the said Act shall be included in the award. Thus it appears that section 8(2) has expressly excluded the application of section 23(2) of the Land Acquisition Act. This question came up for consideration before a Division Bench of this Court presided over by Sankar Prasad Mitra, J. (as he then was) in Monoranjan Routh and Others Vs. State of West Bengal, . It has been held that sub-section (2) of section 8 of the Act excluding the application of section 23(2) of the Land Acquisition Act is violative of Article 14 and is not saved by Article 31B of the Constitution. In Balammal''s case referred to above, the Supreme Court has struck down clause 6, sub-clause (2) of the schedule read with section 73 of the Madras City Improvement Trust Act, 1950 which deprives the owners of the statutory right to solatium at the rate of 15 per cent on the market value of the lands, as invalid and it has been held that the owners of the lands are entitled to the statutory solatium u/s 23(2) of the Land Acquisition Act in consideration of compulsory acquisition of their lands. The same principle will also apply to section 8(2) of the Act which deprives the owners of the statutory right to solatium at the rate of 5 per cent on the market value of the acquired lands, and consequently, to that extent section 8(2) is void. In both these appeals, the learned Land Acquisition Judge awarded compensation on the basis of the market value of the lands as on December 31, 1946 in accordance with the amended provision of the second paragraph of section 8 (1) (b) of the Act. In view of our decision that the second paragraph of section 8(1) (b) as amended by the Amending Act is unconstitutional and void, the appellants are entitled to the market value of the acquired lands on the respective dates of the publication of the notifications u/s 4(1)

of the Act, as compensation. Further, the appellants are also entitled to the solatium as provided in section 23(2) of the Land Acquisition Act. In these circumstances, the awards in both the cases are set aside and, in view of the decision of the Supreme Court in N.B. Jeejeebhoy Vs. Assistant Collector, Thana Prant, Thana, , both the cases are remitted back to the learned Land Acquisition Judge for fresh disposal in the light of this judgment after giving the parties an opportunity to adduce further evidence on the question as to the market value of the acquired lands on the respective dates of publication of the notifications u/s 4(1). Both the appeals are allowed to the extent indicated above, but in view of the facts and circumstances of the cases, there will be no order for costs either in this Court or in the Courts below.